

Special Use Permit for ZPC 22-04

City of Ladue, Missouri

Issued to Cingular Wireless, dba AT&T Mobility For a utility pole location on Ladue Road, near 9530 Ladue Road

WHEREAS, Cingular Wireless, dba AT&T Mobility submitted an application for a Small Wireless Facility, as defined by Section VIII of the Ladue Zoning Ordinance (Ordinance 1175) to be placed on a replacement Ameren utility pole, with a total height of 77 feet in the right-of-way of Ladue Road in the B residential zoning district, which is owned and maintained by the City of Ladue; and

WHEREAS, Small Wireless Facilities and new, modified, and replacement utility poles are authorized in all zoning districts in the City in compliance with and according to Section VIII of the Ladue Zoning Ordinance (Ordinance 1175); and

WHEREAS, this proposed replacement utility pole is more than 15 feet taller than any utility pole within $\frac{1}{4}$ mile of the proposed location and, therefore, requires a Special Use Permit, according to Section VIII of the Ladue Zoning Ordinance (Ordinance 1175); and

WHEREAS, the Zoning and Planning Commission held a public meeting on March 23, 2022 to discuss the application and hear public comment regarding this Special Use Permit; and

WHEREAS, the applicant must secure a waiver due to the fact that this pole exceeds 70 feet in height, with such waiver to be approved upon "good cause shown" by the applicant; and

WHEREAS, the applicant has demonstrated that the topography and tree cover in the City of Ladue coupled with the scarcity of cell towers in the area, requires that this pole exceed 70 feet in height in order to improve cell coverage; and

WHEREAS, the Zoning and Planning Commission considered the effect of the requested Special Use Permit on the health, safety, morals, and the general welfare of the residents, in accordance with Section VII –C of Ordinance 1175, however, due to a difference of opinion, the Zoning and Planning Commission was not able to provide a clear recommendation regarding this application at their meeting on March 23, 2022, and decided by a vote of four (4) in favor and two (2) opposed to send this application to City Council without a recommendation; and

WHEREAS, the City Council held a duly noticed public hearing to hear further comments and discussion regarding this application on April 25, 2022; and

WHEREAS, the proposed location has tall trees, with the tall trees closest to the pole at around 56' in height, which will screen the majority of the height of the pole in the summer, and the replacement utility

pole is not out of character in the City as new Ameren poles being erected in the City are between 65-75' tall; and

WHEREAS, during the City's recent development of the "Ladue Vision 2040" Comprehensive Plan, one of the biggest concerns expressed by residents was the need for reliable cell coverage and broadband service, which are identified by the Plan as "critical quality of life amenities" that can impact home values "in areas of the community that have poor access to cell and internet services", as reflected in the text under Strategy 6.1 of the Plan; and

WHEREAS, all City of Ladue ordinance procedures for approval of a Special Use Permit for Cingular Wireless, dba AT&T Mobility have been followed, pursuant to Section VII of Ordinance 1175; and

WHEREAS, the applicant has demonstrated such good cause for a height waiver including that the topography and tree cover in the City of Ladue coupled with the scarcity of cell towers in the area, requires that this pole exceed 70 feet in height in order to improve cell coverage; and

WHEREAS, after the public hearing and after giving consideration to the criteria for issuance of a Special Use Permit (Section VII – C of Ordinance 1175) and the conditions recommended by the City Planner, the City Council has determined that with the recommended conditions, this application will not have a detrimental effect on the health, safety, morals, or the general welfare of the residents, including the effect on

- 1) Traffic in the streets;
- 2) Fire hazards;
- 3) Overcrowding of land or undue concentration of people;
- 4) Fire, police, and utility services;
- 5) Municipal expenditures;
- 6) The character of the district, and property values in the area; and
- 7) The general suitability of the property in question for the proposed use;

and is in compliance with the requirements for installation of communication antenna in accordance with Section VIII. And, therefore, finds that this Special Use Permit for Cingular Wireless, dba AT&T Mobility, with conditions, is in compliance with all City ordinances and should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LADUE that the Special Use Permit with waiver of height restrictions for ZPC 22-04 on Lay Road shall be issued to Cingular Wireless, dba AT&T Mobility with the following conditions:

- 1) The communication antennas shall be constructed, operated and maintained based on the plans for such antennas approved by the City on April 25, 2022.
- 2) The City must be in receipt of a structural report with an engineer's certification that the pole can support the proposed equipment prior to issuance of any building permit or construction of the same.

- 3) All equipment necessary for the operation of the communication antenna shall be attached to the pole in the most inconspicuous location possible (i.e., facing away from the road or facing away from oncoming traffic).
- 4) Equipment shall be the same color as the Utility Pole and maintained in good condition.
- 5) In accordance with Section IIV.H of Ordinance 1175, when the communication antenna shall no longer be used for their original communications purpose, the owner of the communications antenna or the last lessee, licensee or user thereof shall be obligated, jointly and severally, at their expense to dismantle and remove promptly such antenna from the site. If applicable, the licensed telecommunications user of such communication antenna shall provide the city with a copy of the notice to the FCC of intent to cease operations thereon and shall have ninety (90) days from cessation of the operations to complete the dismantling and removal of its equipment from the site.
- 6) In accordance with Section VII.H of Ordinance 1175, if the communication antenna is not removed based on the requirements of condition 5 above, the City reserves the right at any time thereafter and after giving thirty (30) days written notice to the interested parties, to enter the property and remove the communication antenna, and to charge the costs to the last lessee, licensee or user thereof and to place a lien in the amount of the costs against the property of the owner of the site.
- 7) In accordance with Section 90.283.(b)(3), the granting of this Special Use Permit for installation within the City's rights-of-way shall not operate as an express or implied representation or warranty regarding the City's rights to authorize the installation or construction of facilities on any segment of the rights-of-way, and the City shall not be liable for damages therefrom. It is applicant's sole responsibility for making all such determinations and ensure the proposed location is within the City's rights-of-way in advance of construction or installation. The City has no authority and is not granting the right to install any wireless communication facilities on private property.
- 8) The construction/installation, operation and maintenance of the communication antenna shall comply with all applicable portions of the City's zoning ordinance, building code, Rights-of-Way Management Code, and other applicable ordinances as well as applicable federal and state law and regulations.

The City recognizes that minor modifications to plans that are submitted with an application for a Special Use Permit may be necessary to comply with the requirements of the City or to accomplish the construction of the building or structure involved. All modifications must be brought to the attention of the City and City Planner, and the City Planner is required to resubmit any modifications which, in his/her reasonable determination, result in a change in the use that has been approved or that change the impact

of the approved use on the City and its residents. Modifications of that type must be resubmitted to both the Zoning and Planning Commission and to the City Council.

Issued this _____ by a vote of _____ in favor and _____ against.

The City of Ladue

By: _____

Nancy Spewak, Mayor

Attest:
